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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 3, 1998

By Hand Delivery and First Class Mail

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW Suite 222
Washington, DC 20554

RE: Notice of Ex parte Presentation in a Non-Restricted Proceeding
In re Toll Free Service Access Codes (CC Dkt. No. 95-155).

Dear Ms. Salas:

The Office of Advocacy, U.S. Small Business Administration (SBA), by its undersigned representative and in accordance with Section 1.1206 of the Commission's rules, hereby respectfully submits an original and one copy of this ex parte notification for the SBA and on behalf of the small business representatives listed below.

S. Jenell Trigg, Assistant Chief Counsel for Telecommunications for the Office of Advocacy and the following persons met with FCC personnel on Thursday, April 2, 1998, for a small business roundtable on toll free service issues. The FCC personnel in attendance for this meeting were:

Anna Gomez, Deputy Chief of the Network Services Division/Common Carrier Bureau
Judith Alpert, Attorney-Advisor, NSD/CCB
Robin Smolen, Attorney-Advisor, NSD/CCB
Leslie Selzer, Economist, NSD/CCB
Deena Shetler, Attorney-Advisor Enforcement/CCB
Keith Nichols, Attorney-Advisor Enforcement/CCB
Eric Malinen/Senior Attorney-Advisor, Office of Communications Business Opportunities

The small business representatives in attendance were:

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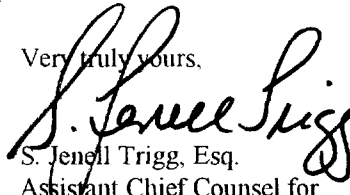
The small businesses, collectively, discussed the following:

1. Serious concerns about the ability to secure toll free numbers on an equitable basis given the FCC's recent release of the rules governing the replication of vanity numbers, *In re Toll Free Service Access Codes, Fourth Report and Order*, CC Dkt. No. 95-155, FCC 98-48 (rel. March 31, 1998). The FCC's "first-come, first served" policy regarding the roll out of 877 does not comport with marketplace realities. Small businesses will have great difficulty getting access to the database, as well as assignment of the priority numbers they request on April 5.
2. FCC has not taken into account the conflict of interest inherent in the structure of larger carriers and their functions of RespOrg, carrier, and subscriber. This conflict is harmful to small business subscribers who compete directly with the carriers for toll free numbers and access to the database.
3. To mitigate the harm to small businesses due to the roll out of 877 on April 5, it is critical that the Commission eliminate the prohibition of hoarding and brokering so that "lost" numbers can be recovered.
4. Major difficulties with the replication of 888 numbers for 800 subscribers due to misinformation or delays from toll free carriers and RespOrgs.
5. FCC needs to acknowledge that vanity numbers are not just phone numbers, but are "electronic gateways" to businesses and "cyber real estate" given the substantial financial and sweat-equity invested in the numbers via promotion, advertising, and marketing. The toll free number is the exclusive "address" to a unique business and is often the sole representation of the business itself. There is no physical office or storefront that represents the business to the public - just the toll free number.
6. Serious concerns about the legal and professional repercussions of any enforcement of the FCC's rebuttable presumption that one is acting illegally as a hoarder or broker if in possession of multiple toll free numbers. Serious concerns about the lack of due process in defending against challenges and the cost of rebutting a claim of illegal behavior.

7. Serious concerns about the "enforcement" actions of large toll free carriers under the color of FCC authority as a means to "steal" or "defraud" numbers from small business subscribers that are using the numbers legitimately in the course of their business.
8. Consensus request for the FCC to repeal its anti-hoarding and brokering rules, and the rebuttable presumption that the possession of toll free numbers indicates illegal behavior.
9. Consensus that the FCC's policy against hoarding is not relevant nor necessary given the abundance of numbers with the introduction of new toll free codes, i.e., 877, 866, etc.
10. Discussion of the range of transactions involving the transfer of toll free numbers from one entity to another that should be acceptable under the FCC's rules, e.g. whether a toll free number can be bequeathed with the business to one's heirs, or whether the sale of the corporation/business is also an acceptable transfer of the toll free number as an asset.
11. FCC should promote market efficiency by allowing the marketplace to allocate toll free numbers, which are valuable resources, to the persons that value them the most via the private sale of numbers.
12. The possession and immediate access to multiple numbers is critical for direct marketers, advertising agencies, call centers, and shared use providers. Multiple numbers are in essence the "inventory" needed to conduct a client's request for services. There are different stages of "use" of numbers in client transactions for the above services. Some numbers are in actual use with an active promotion, others are included in proposals pending client approval, others are pending implementation of a client contract for a service - in preparation for active use, and others are in a cooling -off stage post-promotion/campaign.
13. Discussion whether trademark and unfair trade practice laws are sufficient to protect against or compensate for the unlawful use of a toll free vanity number by a competitor.
14. Concerns about the mechanics of how the FCC's mandated 90 day period for the allocation of 888 numbers (*Fourth Report and Order*) will actually operate: i.e.: 1) whether the carriers or RespOrgs will provide adequate notification to all rightful holders of 888 set asides in a timely manner; 2) whether the FCC will impose a regulatory solution for those 800 subscribers that rightfully set aside the corresponding 888 number (verified by the FCC list of set asides) but whose 888 number has since been allocated to another subscriber without a release from the rightful subscriber; 3) how will the notification process take into account changes in carrier, RespOrg or the transfer of the 800 number since the 888 set aside was first enacted a couple of years ago.

To the extent that a waiver is necessary, we respectfully request the Commission's approval for this late filing. Thank you for your assistance in this matter.

Very truly yours,


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Telecommunications

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 The Honorable Michael Powell
 The Honorable Harold Furchtgott-Roth
 The Honorable Gloria Tristani

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